

APPEAL NO. 031220  
FILED JULY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 10, 2003. With regard to the only issue before him, the hearing officer determined that the respondent (claimant) had disability from March 3, 2001, continuing through the date of the CCH.

The appellant (carrier) appealed, contending that the hearing officer erred in making a finding of compensability when that was not an issue before him, that the cause of the claimant's unemployment was a lay off rather than the compensable injury, and that the hearing officer's order, ordering temporary income benefits (TIBs) be paid until the claimant "reached maximum medical improvement [MMI]" was incorrect, as being beyond the hearing officer's authority. The file does not contain a response from the claimant.

DECISION

Affirmed as reformed.

The claimant had sustained a prior low back injury in (first date of injury), for which another hearing officer had assessed no disability for that injury. In this case, the hearing officer recites that the claimant "sustained a compensable right carpal tunnel syndrome [CTS] injury on \_\_\_\_\_." The carrier, in its closing argument, agreed to an injury to "the wrist which we [the carrier] accepted." (Tape 2, side A, counter 258.) The testimony supports the hearing officer's comment that at some undetermined time after \_\_\_\_\_, and before March 3, 2001, the claimant returned to work in a light-duty position. It is undisputed that on March 3, 2001, the claimant, along with some other employees, was laid off due to a downturn in business. The claimant subsequently had CTS release surgery on March 23, 2001. It is undisputed that the claimant has been unemployed since March 3, 2001. The hearing officer recited the well-settled notion that a conditional or light-duty release is evidence that disability continues. At issue in this case was whether the claimant's inability to obtain and retain employment at the preinjury wage (see Section 401.011(16) for the definition of disability) was due to the compensable injury or the lay off.

The carrier in its appeal faults the hearing officer for making a determination that the claimant sustained a compensable right CTS injury on \_\_\_\_\_, as not being an issue before him. We first note that the definition of disability requires a compensable injury. If the carrier had wanted to contest disability on the basis of no compensable injury, the carrier should have raised that defense. More to the point, however, is that the carrier accepted a compensable right CTS injury and cannot now complain that the hearing officer made a determination of a fact that it had accepted.

The carrier next contends that the hearing officer erred in finding that the compensable injury “was a cause” or was a producing cause of the claimant’s inability to obtain and retain employment at the preinjury wage. Whether the claimant’s unemployment was due to the compensable injury or the lay off was entirely a fact call for the hearing officer. The hearing officer found that the claimant’s compensable injury was the cause of her unemployment and that determination is supported by the evidence.

The hearing officer, in his discussion, findings of fact, conclusions of law, and decision, states that the claimant had disability beginning March 3, 2001, “and continuing through the date of the [CCH].” The order portion of the decision and order however, directs that TIBs be paid until the claimant reached MMI. We believe that portion of the order to be an administrative misstatement and reform the order to read that the claimant is entitled to TIBs beginning “March 3, 2001, and continuing through the date of the CCH or until the claimant reaches MMI, whichever comes first.”

We conclude that the hearing officer’s determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order, as reformed, are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge